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**NO. 83-1547**

Supreme Court, U.S.  
FILED

MAY 9 1984

ALEXANDER L. STEVENS  
CLERK

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**In The  
Supreme Court of the United States**

**OCTOBER TERM 1983**

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**GORDON NOVEL,**

**PETITIONER**

**VERSUS**

**LOUISIANA WORLD EXPOSITION, INC. ET AL.,**

**RESPONDENTS**

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**RESPONSE BRIEF BY PETITIONER, GORDON  
NOVEL, TO BRIEF OF RESPONDENT, LOUISIANA  
WORLD EXPOSITION, INC., IN OPPOSITION TO  
PETITIONER'S APPLICATION FOR WRIT OF  
CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE FIFTH CIRCUIT**

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**Gordon Novel**

**Pro se**

**2825 St. Charles Avenue**

**New Orleans, Louisiana 70115**

**(504)897-0777**

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**QUESTION PRESENTED FOR REVIEW**

Did the United States Court of Appeals for the Fifth Circuit properly dismiss petitioner's appeal for failure to prosecute his appeal and for failure to timely file his appellate brief?

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Respondents.

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FIFTH CIRCUIT

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**RESPONSE OF PETITIONER**

Respondent, Louisiana World Exposition, Inc., assumes the posture in their opposition brief that "no special or significant reason" is stated in petitioner's writ application. The brief then goes on to in effect argue the merits of defendant's case as if the issues presented by

the appeal are before this court. Contrary to respondent's assertions, petitioner's application is a plea for a very significant matter of relief, i.e. "due process of law."

Defendant continuously opposed discovery proceedings in the trial court. Petitioner was forced to attempt to keep his case alive while in federal prison because of activities of some or all of the defendants in this case which is why the suit was filed and the complaint amended to state this. After Judge Wicker ruled against petitioner in the trial court, he attempted to perfect his appeal so that his counsel could handle the appeal. Respondent opposed this action on the grounds it was "premature" for the reason that Judge Wicker had not rendered written reasons. See Appendix A attached hereto — Exhibits 1 and 2.

Contrary to respondent's statements that there was no substance to petitioner's complaint, the brief that petitioner attempted to file with the Fifth Circuit contained two affidavits by persons who were willing to come forward and support the allegations of the complaint. One of the affidavits was by a party defendant who now is willing to testify with respect to the issues presented in the case.

Respondent's brief attempts to gloss over the very heart of petitioner's argument of why certiorari should be granted. This is because the Clerk did not dismiss his appeal and granted an oral extension. Respondent alleges "nothing in the record indicates that this assertion is true" referring to petitioner's stated assurance of this fact coupled with the actions of prior extensions as reflected by the letters copied in the application.

Respondent attempts to paint petitioner as having no regard for rules of the courts and categorizes his actions as "abusive and contumacious." Petitioner would point out that he was tried four times on an alleged non-capital offense, and after six years of having to defend himself, at times without counsel, was able to overturn his conviction and be exonerated. A four-time prosecution for the same offense in a non-capital case is believed to be the only incidence of this ever happening in this country's jurisprudence.

Petitioner in his application has attempted to show that unlike the appellants in the cases cited by respondent, he diligently attempted through counsel to perfect his appeal, and when all else failed, filed it himself in the belief, because of statements and assurances of the Clerk, that he would be able to do so.

Petitioner in his application has attempted to show that the rules of the Fifth Circuit allows this discretion, contrary to the rules of other circuits. For example, the rules for the United States Court of Appeals for the District of Columbia Circuit provides "all motions requesting permission . . . to extend the time for filing briefs, must be filed at least ten days before the main briefs are due to be filed..." Perhaps a substantial issue is presented by the variance in rules of the various circuits. However, petitioner was playing by the rules of the Fifth Circuit, and to change the rules after relying on what apparently are the rules, he is faced with having his day in court denied after a most difficult and tortuous attempt to present his case under most adverse circumstances.

**CONCLUSION**

Respondent's attempt to paint petitioner as "crank" attempting to assert "frivolous and vexatious" litigation is merely a screen to persuade the court that there is no substantial issue in these proceedings. Petitioner's application and this opposition brief demonstrate that petitioner has presented a request for relief that is substantial both in law and in equity and should be considered for all the reasons previously stated.

Respectfully submitted,

By: Gordon Novel \_\_\_\_\_

Pro se

2825 St. Charles Avenue

New Orleans, Louisiana

70115

(504) 897-0777

**CERTIFICATE OF SERVICE**

I, Gordon Novel, appearing pro se, petitioner herein, hereby certify that on this day of May, 1984, copies of the foregoing opposition brief of respondent, Louisiana World Exposition, Inc., were served upon all counsel for respondents by depositing same in the United States mail with first class postage prepaid, properly addressed to:

(1) Mr. Rutledge C. Clement, Jr.

1300 Hibernia Bank Building

New Orleans, LA 70112

(2) Peter J. Butler, Esq.

712 American Bank Building

New Orleans, Louisiana 70130

(3) Phillip A. Gattuso, Esq.

56 Westbank Expressway

Gretna, Louisiana 70053

(4) Pres Kabacoff, Esq.

1404 ITM Building

New Orleans, Louisiana 70130

(5) Edward D. Wegmann, Esq.

225 Baronne Street

New Orleans, Louisiana 70112

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Gordon Novel

Pro se



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APPENDIX "A"

UNITED STATES COURT OF APPEALS  
FIFTH CIRCUIT  
OFFICE OF THE CLERK

January 11, 1982

Mr. Nelson B. Jones, Clerk  
U.S. District Court  
500 Camp Street  
New Orleans, LA 70130

No. 83-3678—NOVEL vs. LOUISIANA EXPO, INC.

(D.C. No. CA 77-3597-L)

Dear Mr. Jones:

Enclosed is a certified copy of an order dismissing the referenced appeal which is issued as and for the mandate.

Respectfully,

GILBERT F. GANUCHEAU, Clerk

By: Marybeth Breaux

/mbb  
enclosures

cc and enclosures to:  
Mr. Harry Diffendal  
Mr. Pres Kabacoff  
Mr. Rutledge C. Clement, Jr.  
Mr. Ewen Dingwall

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IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 81-3678

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GORDON NOVEL,

Plaintiff-Appellant

versus

LOUISIANA EXPO, INC., LESTER E. KABACOFF,  
EWEN DINGWALL,

Defendants-Appellees

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Appeal from the United States District Court  
for the Eastern District of Louisiana

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Before BROWN, POLITZ and WILLIAMS, Circuit  
Judges.

IT IS ORDERED that the motions of appellees,  
Ewen Dingwall and Louisiana Expo, Inc., to dismiss  
the appeal is GRANTED for want of an appealable final  
order.